IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APEAL NO. 80 OF 1999

1. Special Land Acquisition Officer
(South Goa), Konkan Railway
Corporation Limited
Amey Guest House, Davorlim Road,
P.O. Navelim, Salcete, Goa 403 707.

2. Chief Engineer,
Konkan Railway Corporation Ltd.
Rawanfond, Near Margao Railway Station,
Margao, Goa. ..... Appellants.

V/s.

Rui Fernandes
R/o. Chinchinim Salcete – Goa. ..... Respondent.

Mr. Emerico Afonso, Advocate for the appellants.

Mr. Shivan Dessai, Advocate for the respondent.

CORAM : A.P. LAVANDE, J.

DATE : 11TH FEBRUARY, 2005.

ORAL JUDGMENT :

By this appeal, the appellants challenge the legality of the Judgment and Award dated 20.2.1999, passed by the Addl. District Judge, Margao in Land Acquisition Case No.126/95.

2. Notification dated 20.1.1992 under Section 4 of the Land

Acquisition Act, 1894 (hereinafter, referred to as `the Act') was issued by the Government, acquiring large chunks of land for Konkan Railway Corporation Ltd. An area of 8350 sq. metres bearing Survey No.272/1 (part) of Cuncolim Village, Salcete Taluka was acquired by the said Notification. The Special Land Acquisition Officer made his Award on 6.5.1994 and awarded Rs.4/- per sq. metre for an area of 8275 sq. metres and Rs.2/- per sq. metre in respect of 75 sq. metres of nallah. The respondent being aggrieved by the Award made by the Special Land Acquisition Officer, sought reference claiming compensation at the rate of Rs.100/- per sq. metres. In Land Acquisition Case No. 126/1995, the respondent examined two witnesses. He examined himself as AW.1 and the Sub-Registrar of Margao Shri Pandharinath Bodke as AW.2. The appellants examined Shri Espiritto Furtado, as RW.1. The respondent during the course of evidence produced two sale deeds dated 23.8.1988. By one sale deed which is at Exhibit AW.1/E an area of 428 sq. metres was sold for Rs.12,840/- and by another sale deed which is at Exhibit AW.1/F, two plots admeasuring 382 and 422 sq. metres were sold for Rs.24,240/- i.e. at the rate of Rs.30/- per sq. metre. The appellants herein did not produce any documentary evidence. After considering the evidence led by the parties and the arguments advanced by both sides, the reference Court enhanced the compensation of the area of 8275 sq. metres to Rs.40/- per sq. metres and in respect of the remaining part

i.e. 75 sq. metres, maintained the compensation awarded by the Special Land Acquisition Officer. The reference Court relied upon the price of the land mentioned in the Sale Deeds as the market value of the said plots in the year 1988 and enhanced the same to Rs.40/- per sq. metre by increasing the rate by 10 % per year, to determine the market value of the acquired land.

3. Mr. Afonso, the learned Counsel appearing for the appellants submitted that the impugned Judgment and Award given by the reference Court deserves to be set aside since the reference Court has committed illegality by not making any deductions while considering the market rate as on the date of Section 4 Notification, for the development charges in respect of the acquired land. Mr. Afonso further submitted that the sale deeds were in respect of small plots of land and the area acquired by the notification was 8350 sq. metres and, therefore, it was necessary for the reference Court to make appropriate deductions while fixing the market price of the acquired land. The learned Counsel further submitted that the reference Court ought to have deducted 60 % from the consideration mentioned in the sale deed and after considering the deductions, the reference Court could have fixed the compensation giving the necessary increase considering the fact that Section 4 Notification was issued after three years and four months from the date of execution of the said sale deeds. In support of his submissions that 60

% deductions ought to have been made by the reference Court, the learned Counsel relied upon the Judgment of this Court in the case of ***Madhusudan R. Mahambre vs. Special Land Acquisition Officer (North) and anr.*** (2002 (6) Bombay C.R. 163). The learned Counsel does not dispute that since the sale deeds are in respect of the same land, the consideration mentioned in the sale deeds could be the basis for determining the market price of the acquired land.

4. Per contra, Mr. Dessai, learned Counsel appearing for the respondent submitted that no interference is called for by this Court against the impugned Judgment and Award. The learned Counsel further submitted that in any event the deductions cannot be 60 %. But having regard to the facts and circumstances brought on record, the deductions ought not to be more than 33 -1/3 %. The learned Counsel further submitted that the Apex Court has held that the deductions can range from 33-1/3 % to 53 % depending upon the nature of the land acquired. In support of his submission, the learned Counsel has relied upon the following Judgments of the Apex Court.

(1) K. Vasundara Devi vs. Revenue Divisional Officer (LAO), ((1995) 5 SCC 426)

(2) Basavva (Smt.) and ors. vs. Spl. Land Acquisition Officer and ors. ((1996) 9 SCC 640); and

(3) State of M.P. and ors. vs. Harishankar Goel and anr. ((1997) 2)

SCC 487.

5. I have considered the submissions made by the learned Counsel for the parties. Since the sale deeds relied upon by the respondents are in respect of the land bearing Survey No. 272/1 which forms part of the larger property including the area acquired, the price mentioned in the said sale deeds can be safely taken as basis for determining the compensation in respect of the acquired land. However, while fixing the market value of the acquired land, it cannot be lost sight of the fact that the area acquired is 8350 sq. metres and the sale deeds are in respect of smaller plots. Therefore, the deduction has to be made from the price mentioned in the sale deeds to arrive at the market value of the acquired land. Having regard to the ratio laid down by the Apex Court in various Judgments and also considering the materials on record, produced by the respondent, I am of the opinion that in the facts and circumstances of the case, it would be proper to make deduction of 50% while arriving at the market value of the acquired land. Applying this principle, the value of the acquired land in August, 1988 comes to Rs.15/- per sq. metre. Notification under Section 4 of the Act was issued on 20.1.1992 and, therefore, considering the increase of 10 % per annum, the price of the acquired land comes to Rs.20/- per sq. metre. In my opinion, therefore, Rs.20/- per sq. metre would be the correct market value of the acquired land as on the date of Section 4

Notification. I am unable to accept the approach of the reference Court to arrive at market price of Rs.40/- per sq. metre. The reference Court has not taken into consideration the deductions which are to be made while fixing the market value of the land. In my opinion, therefore, the rate of Rs. 20/- per sq. metre would be the market price of the acquired land as on the date of Section 4 Notification in respect of an area of 8275 square metres. The rate of Rs.2/- per sq. metre in respect of 75 sq. metres of nallah is maintained. Needless to mention that the respondent will be also entitled to all other benefits under the Act.

6. In the result, therefore, the appeal is partly allowed and the rate of compensation fixed by the reference Court at Rs.40/- per sq. metre is reduced and the same is fixed at Rs.20/- per sq. metre. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.